

The issues above enumerated are specified in K.S.A. 44-534a as granting jurisdiction to the Appeals Board to review findings of the Administrative Law Judge from an appeal of a preliminary hearing, as such, these matters are properly before the Appeals Board.

Claimant alleges injury on December 19, 1994, while pulling linen carts off of a delivery truck. Claimant alleged immediate pain in his back. Claimant did not tell Ken Kackley, his supervisor, on the date of injury but does allege to have told the supervisor the next day. Claimant did not seek medical treatment and further failed to prepare an accident report with respondent for the alleged injury. Claimant testified that Mr. Kackley had told him to take vacation days starting the next day in order for him to recover from this injury.

Mr. Kackley contradicted claimant's testimony alleging he had never been told of any injury suffered by claimant on the date alleged. He further advised that claimant had scheduled his vacation time several months in advance. Claimant conducted delivery runs to Enid, Oklahoma on December 22, 25 and 27 with the intervening days being vacation days scheduled three (3) to six (6) months in advance. When claimant first sought medical with Dr. Lemons, claimant alleged injury on December 18, 1994, a date when claimant did not work. Claimant had originally alleged a date of injury on December 18, but later amended his injury date to December 19.

Physical therapy notes dealing with claimant's treatment indicated an onset of pain beginning Sunday morning when he woke up. The medical notes indicated no history of trauma.

The notes of Dr. Lemons dated January 11, 1995, indicated claimant had been suffering from low-back and hip pain over the last couple of days, with no history of trauma.

Both Mr. Kackley and Sheila Whiston-Fox, the Director of Employee Relations, testified to claimant having been fully oriented in the policy regarding notice of work-related injuries. Claimant was instructed when he was hired to report any work-related injuries to his supervisor within twenty-four (24) hours.

According to Mr. Kackley and Ms. Whiston-Fox, the first specific notice to respondent of a back problem occurred on January 11, 1995, when claimant did not come to work due to a backache. Even at this time, claimant did not allege that his back complaints were work related. The first actual notice of a work-related connection to claimant's low-back injury came on February 27, 1995.

The Appeals Board finds it significant that claimant had suffered other accidents with respondent and on each occasion prepared an accident report on the same day as the accident or on the day after the accident. In this instance, no accident report was ever prepared for the alleged injury of December 19, 1994.

K.S.A. 44-501 and K.S.A. 44-508(g) make it the burden of the claimant to establish the claimant's right to an award of compensation by proving the various conditions on which the claimant's right depends by a preponderance of the credible evidence. See also Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

In this instance, the Appeals Board finds claimant has failed to prove by a preponderance of the credible evidence that he suffered accidental injury arising out of and in the course of his employment with respondent on the date alleged. The Appeals Board further finds claimant did not timely advise respondent within ten (10) days of the date of injury as required by K.S.A. 44-520 and no just cause was shown for this failure on claimant's part to so notify the respondent.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes of May 30, 1995, shall be and is reversed and claimant is denied benefits against respondent and its insurance carrier for the alleged injury of December 19, 1994.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August, 1995.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: G. Knute Fraser, Wichita, Kansas  
Frederick L. Haag, Wichita, Kansas  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director